IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1316 OF 2004

Krishnarao Shankarrao Patil .. Petitioner

V/s

Appaso Shamrao Khade & Ors. .. Respondents

Mr.S.S. Patwardhan with Mr.M.L. Patil for the Petitioner.

Mr.A.Y. Sakhare with Mr.Sarang Aradhye for Respondent No.1.

Mr.R.M. Patne, A.G.P. for Respondents Nos.3 and 4.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 19TH JULY 2005

P.C. :

1. Heard Mr.Patwardhan for the Petitioner. Mr.Sakhare appears for Respondent No.1 - the contesting Respondent. Mr.Patne, A.G.P. appears for Respondents Nos.3 and 4.

2. The Petitioner herein is elected to the Respondent No.2 Market Committee from the constituency of the agriculturists. A complaint was made by the Respondent No.1 to the Respondent No.3 - Director of Marketing that the Petitioner is not an agriculturist but is a Commission Agent. It was therefore submitted

that he could not continue in the Market Committee to represent the agriculturists. That complaint / application has come to be allowed by Respondent No.3 by his order dated 28th January 2004. The same is challenged in the present petition.

3. Mr.Patwardhan, learned counsel for the Petitioner, submits that the Director of Marketing has no jurisdiction to decide the issue which he has decided. He specifically referred to Rule 41 and particularly Sub-rule (2)(ii) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967. His submission was that this was the disqualification alleged namely that he was representing the agriculturists' constituency and his income was not from agriculture. In his submission, the jurisdiction to decide this disqualification is not with the Director. According to him, it is only the disqualifications which are mentioned in sub-rule (1) of Rule 41 which are available to the Director to decide under Rule 41(3). Mr.Sakhare opposes this submission and, according to him, sub-rule (2) gets covered when read with sub-rule (1)(k) of Rule 41 to give the jurisdiction to the Director.

4. In any case, a remedy is available to the Petitioner by way of filing an appeal under sub-rule (5)

of Rule 41. That appeal is to be filed within 30 days. The present petition was being prosecuted all these days. In view of the aforesaid submission of Mr.Sakhare, we are of the view that it would be better that the Petitioner carries the matter in appeal to the Appellate Authority where he should raise the aforesaid submission with respect to lack of jurisdiction of the Director. Mr.Sakhare has no objection to the appeal being filed provided the same is filed within 30 days hereafter and in which case he will not raise the question of limitation.

5. Mr.Patwardhan has taken instructions from the Petitioner. He states that the Petitioner will file this appeal within 30 days. He therefore does not press this petition any more. The same stands disposed of.

6. Mr.Patwardhan points out that there is an order of status quo whereby by-election to the particular seat is not being held. This status quo will continue for a period of 4 weeks hereafter.

7. The submissions of both the parties will be available to them in the appeal to be preferred under sub-rule (5) of Rule 41.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)